IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE V.GIRI

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

CRL.A.No. 1717 of 2004()

CP.46/2001 of JUDL. MAGISTRATE OF FIRST CLASS, PEERUMEDU
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APPELLANT:

SAJAN,S/O.THANKAPPAN,C: 8785 C.P.TVM.695 012.

BY ADV. SRI.SAJEEV.T.P.
SRI.K.P.PRADEEP

RESPONDENT:

STATE OF KERALA

BY PUBLIC PROSECUTOR SRI.NOBLE MATHEW

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 10/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & V.GIRI, JJ.

CRL.A.NO.1717 OF 2004 (D)

Dated this the 10th day of August, 2007

J U D G M E N T

KOSHY,J.

Appellant/accused was convicted and sentenced for life under Section 302 of the Indian Penal Code for murdering his own father. The allegation of the prosecution was that, on 2.4.2001, at about 8 p.m. while the deceased was standing near the front door of his residential house, accused has stabbed him with a chisel on his left chest with the intention to kill him and due to the stab injury, the father of the accused took his last breath and thereby accused has committed the offence punishable under Section 302 of I.P.C.

2. PW1 is the brother of the accused. He gave Ext.P1 F.I.Statement. According to him, he along with his family consisting of his wife and child were living along with his father

in that house. PW2 is his youngest brother. He is living in another place. The accused who is also a brother was given another place and he was staying with his family in that place. Because of the quarrel, his wife and children deserted him and as he was alone the house was later damaged. Thereafter accused also came to the house to reside along with the deceased. On 2.4.2001, there was a function in his house regarding the construction of the new house. His elder brother PW2 also came there. While they were taking tea together, PW2 told the accused to go from the house and asked to live in the house given to him. Accused stated that he will decide that matter but the deceased also supported PW2. Thereafter the accused went away and the deceased while walking through the varandha, the incident had occurred. On hearing the cry and sound, he along with PW2 and his wife went there. In F.I.Statement he stated that he saw accused running away and father was lying in a pool of blood. But before the court he deposed that he saw accused removing the chisel from the body of the deceased and running away. Accused removing the chisel was not stated in the F.I.Statement. But that was the only addition stated in the deposition and the

F.I.Statement. But for that his evidence tallies with the F.I.Statement. PW1 is the brother of the accused and son of the deceased. At the time of giving Statement on the next day morning, he must be a distressed man. In any event, F.I.R. need not be an encyclopedia of evidence. As held by the Apex Court in ***Kamma Otukunta Ram Naidu v. Chereddy Pedda Subba Reddy and others (2003 (11) SCC 293)***, merely because minute details of the occurrence were not mentioned in the F.I.R., it cannot be rejected. PWs.2 and 3 who reached the place immediately also deposed that they saw accused removing the chisel from the body of deceased and running away. PW2 the brother and PW3 wife of PW1 also stated almost similar version. Nothing come out in cross examination except a vague suggestion that there was an enmity between brothers. Merely because eye witnesses were relatives their evidence cannot be rejected. Here both accused and deceased are relatives. Apex Court in ***Anil Sharma v. State of Jharkhand ((2004) 5 SCC 679)*** held that evidence of eye witnesses cannot be rejected merely because they are relatives. Here, since offence was committed in the house in the night, PWs.1 to 3 are natural witnesses and no other

independent witnesses are available. The incident occurred at 8 p.m. It came out in evidence that incident occurred at about 18 kms away from the Police Station. F.I.Statement was given and that was recorded on the next day morning. The place of incident is a remote village in the high range where transport facilities are also meager. The delay is giving F.I.Statement was sufficiently explained. In 313 statement there is no specific explanation of the injury. Admittedly injury occurred when the accused was present in the house. The Chisel MO4 was recovered on the basis of the disclosure statement Ext.P5 (a) made by the accused and the seizure mahazer Ext.P5 was attested by PW7 Salim.

3. Ext.P11 post mortem certificate supported the version given by PWs.1 to 3. PW11 conducted post mortem. In Ext.P1 following ante-mortem injuries were noted:

INJURIES (ANTE-MORTEM)

> 1. Incised penetrating wound 5 x 1.5 cm vertically placed on the left side of the front of chest. Both ends showed splitting of tissues. Upper end was 2 cm. below the inner end of collar bone and 2.5 cm out to the mid line. Chest wall was penetrated through the 1st and 2nd intercostals spaces and also by cutting

> the 2nd and 3rd ribs. Upper lobe of left lung was pierced through and the wound terminated in the chest cavity. Total minimum depth was 5 cm. and the direction was backwards. Left chest cavity contained 1.5 litres of blood with clots.
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> 2. Abrasion 1 x 0.5 cm. on the back mid line of trunk 12 cm. above the natal cleft.
>
> 3. Two abrasion each measuring 3 x 1 cm. and 1 x 1 cm. placed one above the other seen on the back of left side of the chest 1 cm. apart and the former one was 3 cm. below the lower angles of scapula.

Doctor opined that death was due to the penetrating injuries sustained to the chest.

> "During cross examination before the court PW11 has categorically stated that death was due to the penetrating injury sustained to the chest of deceased. He was shows MO4 chisel. He would state that injury No.1 noted in Ext.P11 could be caused with a weapon like MO4. During cross examination he has stated in unequivocal terms that injury No.1 can never be a self inflicted injury. So also he has stated that it could not be caused by a fall on a sharp object. In other wards, from the nature of injury caused, coupled with the details available from Ext.P2, it is crystal clear that death of the deceased was caused due to stab injury. Bearing this fact in mind, the evidence given by the occurrence witness has to be analysed. PW1 has stated in no uncertain terms that he saw the accused pulling out chisel from the chest of the deceased. The said version given by PW1 is corroborated by the version given by PWs.2 and 3.

Evidence would clearly show that accused was a carpenter by profession and chisel is one of his essential tools. F.S.L. report shows that it was blood stained. The evidence is very clear that even though PWs.1 to 3 has not deposed regarding the actual stabbing, it was done by the accused and he ran away immediately after the crime. It was submitted by the learned counsel for the accused that even if accused has stabbed, it was due to sudden provocation. We are of the view that accused cannot claim exemption as the father did not give any sudden provocation. It is true that PW2 stated that since accused was given another place he can live there and he has to go there instead of creating problems. Deceased only supported the same. It cannot be stated that such version will amount to a provocation so as to kill one's own father. The injury caused to the father was sufficient in the ordinary course of nature to cause death. There is no justifiable circumstances to convert the sentence under Section 304 part II of I.P.C. Justice demands that the court should impose punishment befitting the crime and as held by the Honourable Apex Court in ***State of Karnataka v. Puttaraja ((2004) 1 SCC 475),*** undue sympathy to impose inadequate sentence is injustice.

Apex Court in ***Surjit Singh v. Nahara Ram and another ((2004) 6 SCC 513)*** held that inadequate sentence would do more harm to the justice system to undetermine the public confidence in the efficacy of law. Merely because there is one solitary blow, Section 302 will not be ruled out. Nature of weapon used and part of the body where injury was caused etc. are relevant factors. See ***Thangaiya v. State of Tamil Nadu (2005 AIR SCW 76) and Aditya Mohapatra and another v. State of Orissa (AIR 1980 SC 2110)***. Here chisel a deadly weapon was used to inflict injury, which was sufficient to cause death in the ordinary course of nature on the chest, vital part of the body with force. In the above circumstances, we see no ground to interfere in the conviction and sentence passed by the Sessions Court and hence this appeal is dismissed.

J.B.KOSHY, JUDGE

V.GIRI, JUDGE

prp

J.B.KOSHY & V.GIRI, JJ.

CRL.A.NO.1717 OF 2004 ()

J U D G M E N T

10th August, 2007